PREME COURT, U. S.

FILED
NOV 10 1969
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 318

MRS. FANNIE LOU HAMER et al.,
Petitioners,

vs.

SAM J. ELY, JR. et al.,
Respondents.

RESPONSE OF RESPONDENTS TO PETITION FOR CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

A. F. SUMMER
Attorney General of the State of Mississippi
WILL S. WELLS
Assistant Attorney General of the State of Mississippi
Post Office Box 220
Jackson, Mississippi
W. DEAN BELK, JR.
Special Counsel
Indianola, Mississippi
Attorneys for Respondents

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, HArrison 1-3030

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On February 21, 1967, the United States District Court for the Northern District of Mississippi, pursuant to the direction of the Court of Appeals for the Fifth Circuit in Hamer v. Campbell, 358 F.2d 215, entered an Order setting

aside the primary and general elections held in the Town of Sunflower, Mississippi and ordered a new general election to be held on May 2, 1967. This new election was for the choosing of a mayor, five Aldermen and a Town Clerk to fill the unexpired terms of those officers then holding offices in Sunflower.

The new election was held pursuant to the court order. On May 11, 1967, Plaintiffs-Petitioners filed a motion with the District Court to set aside the election held on May 2nd and to order a new election. They attached certain affidavits to their motion and asked for a hearing. A full hearing was held by the District Court on August 30, 1967. Following that hearing and a submission of Briefs, the District Court issued its opinion in which it made a detailed finding of facts and its conclusions of law. Appendix C, pages 11A-16A, Plaintiffs'-Petitioners' Petition for Writ of Certiorari.

On appeal to the Circuit Court of Appeals for the Fifth Circuit, Petitioners primarily urged reversal of the District Court because only white election officials assisted illiterate voters and because, as they maintained, segregated voting lines were permitted for persons waiting in line to vote. The District Court found, as a matter of fact, that there were no segregated voting lines. This finding of fact, the Court of Appeals agreed with.

Petitioners apparently now have abandoned their claim that segregated voting lines were permitted and do not include that claim in the questions presented. Page 2, Petition for Certiorari.

The only relief sought by Plaintiffs-Petitioners in the District Court and in the Court of Appeals was the setting aside of the election of May 2, 1967, and ordering of a new election. The granting of that relief is now a moot question.

The election conducted on May 2, 1967, was for the election of officers to fill the unexpired terms of those municipal officers then holding offices. Section 3374-62 of the Mississippi Code of 1942 provides for the election of all municipal officers every four years. Section 3374-63 of the Mississippi Code of 1942 provides for primary elections to precede the general elections. A copy of these two sections is attached as Exhibit "A" to this response for the benefit of the Court.

Pursuant to Section 3374-62, the terms of the officers elected in the Town of Sunflower at the May 2, 1967 election expired on the first Monday of July, 1969. On the second Tuesday of May (May 13, 1969) a new primary election was held in the Town of Sunflower pursuant to Section 3374-63. At that election there were twelve candidates for the five Aldermen positions and two candidates for the position of Mayor. Six of the candidates for Aldermen were Negroes including two of the Plaintiffs-Petitioners. At the election, two Negroes served as election officials and assisted any Negro illiterate voters who requested their assistance. At the request of the officials of the Town of Sunflower, federal observers were present at this election. No Negro was elected. Following this primary election, pursuant to Section 3374-62, a general election was held on June 3, 1969, and the officers elected took office on the first Monday of July, 1969. Plaintiffs-Petitioners have voiced no objection to that election, although they participated in it.

Therefore, what Plaintiffs-Petitioners now seek is simply an advisory opinion from this Court.

CONCLUSION

The finding of facts and conclusions of law by the District Court and the Opinion of the Fifth Circuit are so complete and in such detail that it is felt that any further

discussion in this response would be redundant and unnecessary duplication. The only relief which Petitioners could receive at the hands of this Court is merely an advisory opinion which this Court has consistently refused to give. A Declaratory Judgment is not involved. Therefore, we earnestly submit that the petition for certiorari should be denied.

Respectfully submitted,

A. F. SUMMER
Attorney General of the State of Mississippi
WILL S. WELLS
Assistant Attorney General of the State of Mississippi
Post Office Box 220
Jackson, Mississippi
W. DEAN BELK, JR.
Special Counsel
Indianola, Mississippi

By: .....
WILL S. WELLS
Of Counsel for Respondents

EXHIBIT "A"

CROSS REFERENCES: Registration and Elections §§ 3206, 3210 et seq., 3260.

REFERENCES: 18 Am Jur 231, Elections §§ 82 et seq.

Annotations

Nonregistration as affecting legality of votes cast by persons otherwise qualified. 101 ALR 657.

§ 3374-62. Municipal elections—time for holding.

A general municipal election shall be held in each city, town or village on the first Tuesday after the first Monday of June, 1953, and every four years thereafter, for the election of all municipal officers elected by the people. The officers elected shall qualify and enter upon the discharge of their duties on the first Monday of July after such general election, and shall hold their offices for a term of four years and until their successors are duly elected and qualified.

The terms of all municipal officers whose terms of office would otherwise expire within twelve months prior to the first Monday in July, 1953, including those officers elected for a two-year term, are hereby extended until the first Monday in July, 1953, and their successors shall be elected on the first Tuesday after the first Monday in June, 1953, as provided in the first paragraph of this section, and thereafter the terms of office of all elected municipal officers shall be for a period of four years. All municipalities which presently elect their officers for a period of two years shall elect such officers, as provided by law, in December 1950, and section 3764, code of 1942, is hereby continued in effect for such purpose, and such officers so elected shall hold office until the first Monday of July, 1953. It is the purpose of this act, however, to provide that the municipal

officers who would otherwise be elected in the year 1952 shall not be elected in such year, but shall be elected on the first Tuesday after the first Monday in June, 1953, as is herein provided. [Supersedes § 3764, Code of 1942.]

SOURCES: Codes, 1930, § 2597; Laws, 1922, ch. 219; 1928, ch. 184; 1932, ch. 226; 1936, ch. 281; 1950, ch. 491, § 62.

CROSS REFERENCES: §§ 3374-35, 3374-55, 3374-108, this title: Officers § 4028; Primary Elections §§ 3152 et seq.

JUDICIAL DECISIONS UNDER REPEALED STATUTES

Provision for election in 1932, and every four years thereafter, held applicable to municipalities which had adopted commission form of government before Code became effective. State ex rel. Colmer v. Benvenutti, 162 M 313, 137 So 537.

§ 3374-63. Primary elections.

Except as may be otherwise provided by law, all candidates for municipal offices to be voted for at any general election shall be nominated at a party primary election, and no name or names shall be placed upon the official ballot at such general election other than those selected in the manner prescribed herein. Such primary elections shall be held on the second Tuesday in May preceding the general election, and, in the event a second primary shall be necessary, it shall be held on the third Tuesday in May preceding the general election. All primary elections in municipalities shall be held and conducted in the same manner as is provided by law for state and county primary elections. [Supersedes § 3795, Code of 1942.]

SOURCES: Codes, Hemingway's 1917, § 6043; 1930, § 2631; Laws, 1912, ch. 120; 1950, ch. 491, § 63.

CROSS REFERENCES: Primary Elections §§ 3152 et seq.